

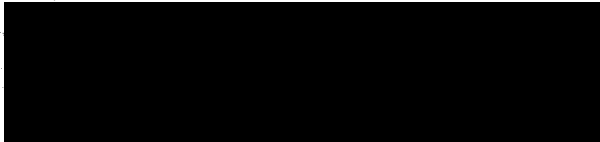
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**U.S. Department of Homeland Security
Citizenship and Immigration Services**

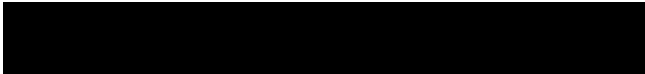
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FILE: 
EAC 99 224 50797

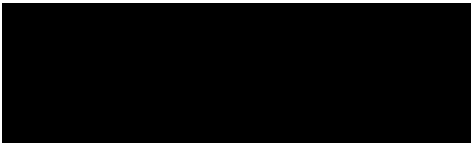
Office: Vermont Service Center

Date: **FEB 12 2004**

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act,
8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant is ineligible for TPS because he has been found to be HIV-Positive. He maintained that the Form I-601, Application for Waiver of Grounds of Excludability, was denied on January 13, 2001, based on abandonment; therefore, the applicant remains inadmissible to the United States pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i).

On appeal, counsel asserts that a motion to reopen the director's denial of the Form I-601 waiver application was filed and received by the Service on February 12, 2001. Counsel submits evidence to establish that assertion.

Section 212(a)(1)(A)(i) of the Act states, in part:

Any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,

is inadmissible to the United States. HIV has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. 34.2(b)(4). Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived.

The record reflects that on January 13, 2001, the director denied the applicant's Form I-601, based on abandonment, because the applicant failed to submit additional evidence as had been requested. The applicant was advised that if he wishes to file a motion to reopen, it must be filed by February 15, 2001, with fee.

The record of proceeding contains the applicant's motion to reopen his waiver application, timely received by the Service (now CIS)

on February 12, 2001, under EAC 01 103 50713. There is no evidence in the record that the motion to reopen was considered by the director.

The case will, therefore, be remanded so that the director may fully adjudicate the waiver application based on counsel's motion to reopen filed in 2001. Based upon the outcome of that decision, the director shall enter a new decision as to the application for TPS which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.